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CENTRAL ADMINISTRATIVE TRIBUNAL  
BOMBAY BENCH  
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Original Application No: 102/91.

Transfer Application No:

DATE OF DECISION: 12.8.1994.

Shri M. Vasudevan, Petitioner

Applicant in person. Advocate for the Petitioners

Versus  
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Union Of India & Others. Respondent

Shri A. I. Bhatkar, Counsel

for Shri M. I. Sethna, Advocate for the Respondent(s)

CORAM :

The Hon'ble Shri Justice M. S. Deshpande, Vice-Chairman.

The Hon'ble Shri V. Ramakrishnan, Member (A).

1. To be referred to the Reporter or not ? *no*
2. Whether it needs to be circulated to other Benches of the Tribunal ? *no*

*V. Ramakrishnan*  
*[Signature]*  
(V. RAMAKRISHNAN)

MEMBER (A)\*

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BEFORE CENTRAL ADMINISTRATIVE TRIBUNAL  
BOMBAY BENCH, BOMBAY

OA. 102/91.

Shri M. Vasudevan

.. Applicant.

Vs.

Union of India & Others.

.. Respondents.

Coram : Hon'ble Shri Justice M.S. Deshpande, Vice  
Chairman.

Hon'ble Shri V. Ramakrishnan, Member (A).

Appearances :

1. Applicant in person.
2. Shri A.I. Bhatkar, Advocate  
for Shri M.I. Sethna, Advocate  
for the Respondents.

JUDGEMENT :

Dated : 12/8/91

[ Per : Shri V. Ramakrishnan, Member (A) ]

The applicant who is now an Assistant Accounts Officer claims that he should be given promotion with retrospective effect from the date on which the post for his turn fell vacant instead of from 25.08.1989, as had actually been done.

2. The applicant was earlier working as Junior Accounts Officer in the department of Telecommunication with effect from 20.01.1984 on regular basis. Based on the recommendations of the Fourth Pay Commission, the Government of India decided to place 80% of the posts of Junior Accounts Officer in the scale of Rs.1640-2900/- in the higher grade of Rs.2000-3200/-. The orders took effect from 01.04.1987. On account of some administrative reasons, particularly, with regard to prescribing criteria for

appointment to the higher functional grades requiring promotions to the grade of Rs.2000-3200, the government took some time for finalising the procedure to be adopted for promoting eligible persons to the higher grade of Rs.2000-3200. Eligibility for promotions from the grade of Junior Accounts Officer to the Deputy Accounts Officer (which was subsequently redesignated as Assistant Accounts Officer) was fixed as three years regular service in the cadre of Junior Accounts Officer as on 1st July of each year. It was also decided that D.P.C. should meet every year to assess the suitability of the officials. In view of the time lag in implementing the measure, the department decided that retrospective promotion be given for the period from 01.07.1987 to 30.06.1988 for promotion in respect of vacancies anticipated upto 30.06.1988. However, promotions in respect of vacancies from 01.07.1988 onwards would be given prospectively. This policy decision was taken keeping in view the fact that similar decisions were taken in the Office of the Controller Defence of Accounts and also Department of Posts. The respondents department have also shown us the copy of relevant noting in the file dealing with this question.

On the basis of the policy referred to above, the department convened meetings of the D.P.C. on 03.10.1988 and 15.03.1989 for filling up the anticipated vacancies upto 30.06.1988. After considering the eligible candidates the department issued orders dated 30.5.1989, 12.5.1989 and 25.8.1989. The order dtd. 25.8.1989 annexed to the application promoted 47 persons from various dates starting from 01.01.1988 to 27.05.1988. In respect of vacancies which arose with effect from 01.07.1988

onwards, the meeting of the D.P.C. was convened on 27.04.1989. The applicant was considered in this D.P.C. and was promoted by another order on the same date namely 25.08.1989. This order promoting the various Junior Accounts Officers to the level of Assistant Accounts Officers including the applicant, however, did not give any retrospective effect to the promotion. The applicant is aggrieved of what he regards as discriminatory treatment and claims that he also should be promoted retrospectively. He further contends that there were sufficient number of vacancies upto 30.06.1988 against which he could have been accommodated but the department has chosen not to extend the benefit of retrospective promotion to him.

3. We have heard the applicant in person and Shri A.L. Bhatkar for the department.

4. The respondents refer to the circumstances leading to the policy decision to give retrospective effect to the promotion in respect of vacancies upto 30.06.1988. They state that D.P.C.s were convened to consider eligible candidates in respect of vacancies which were anticipated for the period upto 30.06.1988. According to them, the D.P.C. had met on 3.10.1988 and 15.3.1989 for forming a panel with eligible officers for promotion against the vacancies anticipated for the period from 1.7.1987 to 30.06.1988. Shri Bhatkar submits that the D.P.C. took into account the position as it would have existed on 01.07.1987 even though it met much later. The performance of the officials as reflected in

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the Confidential Reports only up to the date was taken into account and it also took into account only the number of anticipated vacancies as on 01.07.1987 in the following year and not the actual vacancies. These vacancies were 116. <sup>For</sup> Of these vacancies, 126 officials were considered, of whom 10 were declared as unfit, and the case of 16 officials were kept in sealed cover by the D.P.C. and the remaining 100 officials were promoted under the orders issued on 30.05.1989, 12.05.1989 and 25.08.1989. Neither the applicant nor any of his juniors was in the panel prepared for this period. Infact, there were a few officers who were fit and who were also senior to the applicant, who were not promoted by these orders but they got their promotion subsequently with effect from 25.08.1989. Shri Bhatkar contends that there has been no discrimination against the applicant and that the action of the department is entirely in order.

5. The main grounds adduced by the applicant in support of his claim are that the action of the department is discriminatory, as they had promoted a number of officials but denied the benefit of retrospective promotion to him even though there were vacancies upto 30.06.1988 against which he could have been accommodated. He has also contended that the department of Telecommunication had given retrospective promotion to two junior Divisional Accountants as Assistant Accounts Officers. Even though they belong to a different cadre, there is no reason as to why the department should adopt a different standard so far as the applicant is concerned.

6. We have carefully considered the submissions of the parties. F.R. 17 clearly states that an officer shall begin to get the pay and allowances attached to his post

with effect from the date when he assumes the duties of the post. It is therefore the normal rule that a person can get the pay of the post only when he takes charge of the post and not from the date the vacancy arose. The action of the department in deviating from this rule in respect of some officers while promoting the Junior Accounts Officers as Deputy Accounts Officer (subsequently redesignated as Assistant Accounts Officer) has been adequately explained. This was done because based on the recommendations of the Fourth Pay Commission, the Government of India had decided to place 80% of the post, of Junior Accounts Officers in the higher grade of Rs. 2000-3200 and those orders were given effect to from 01.04.1987. There was considerable time lag before the department could work out a systematic procedure for giving effect to this decision. The department, therefore, considered it fit and appropriate that retrospective promotion could be given to the appointments made initially keeping in view the practice followed in the sister organisations like Department of Posts and Defence Accounts Department. The department also decided that this should be done in respect of the first two panels which were prepared to fill up vacancies for the period from 01.07.1987 to 30.06.1988. Obviously, this one time exception of giving retrospective promotion cannot be continued indefinitely. The applicant was not in the panel prepared for vacancies upto 30.06.1988 as he was junior, even though he had completed three years of service as Junior Accounts Officer before 01.07.1987. He was, however, considered in respect of vacancies for the period 01.07.1988 to 30.06.1989 and pursuant to the findings of the Departmental Promotion Committee, was promoted as Assistant Accounts Officer by the order dated 25.08.1989. We also notice from the order issued to

implement the earlier panel that vacancies upto 20.05.1988 were covered. The department has to fix some cut off date for relaxing the provision of F.R. 17 and they have kept it as vacancies upto 30.06.1988. None of the juniors of the applicant in the general category was promoted from an earlier date and all those who got the benefit of retrospective promotion, were senior to him. The action of the department in<sup>the</sup> context of the peculiar circumstances of the case, cannot be termed as arbitrary, as the benefit of retrospective benefit was confined only to the panels prepared on 15.03.1989 and 03.10.1988 and earlier. The applicant's name figured in the panel prepared on the basis of the recommendations of the D.P.C. which met on 27.04.1989. As it is not an arbitrary classification, this is not in violation of Article 14 or Article 16 of the Constitution, as alleged.

7. The applicant has also contended that the number of vacancies upto 30.06.1988 as worked out by the department is not correct and there were additional vacancies against which he could have been accommodated. He has no separate information in this regard but bases his submission relying on the reply statement of the respondents. He claims that there were about 29 posts which were vacant for the period from 01.05.1988 to 30.06.1988. He has also made certain calculations regarding the availability of vacancies and annexed the same to the application.

8. The department points out that the applicant has proceeded on certain wrong assumptions and that the position brought out by him is factually not correct. They have indicated that the upgradation of the post of

Junior Accounts Officers has to be done with reference to the posts available as on 1st July of each year. The assumption that the upgradation of the post of Junior Accounts Officers to the higher grade is available simultaneously with the creation of posts in the lower grade is not correct. The vacancies on account of promotion to the grade of Accounts Officers can be filled up only from the date the officials holding the post of Assistant Accounts Officers vacated the lower post for joining the higher grade and not on the date of issue of orders. The department further avers that the calculations brought out in the annexure to the application are not correct, as some of them related to a period later than 30.06.1988. It has also been mentioned that when the D.P.C. meets to consider promotions for any year, commencing from 1st July, it has to take into account the position as existing on that date. They have therefore to proceed on the basis of anticipated vacancies. Taking into account all these factors, the department asserts that they had rightly assessed the number of vacancies available upto 30.06.1988.

9. The applicant has no separate information regarding number of vacancies but has only drawn certain inferences from the reply statement of the respondents. We see no reason to disregard the explanation offered by the department to show that their assessment of vacancies is correct, whereas the applicant's calculations are based on certain wrong assumptions. The applicant has stated that some persons who had not completed three years of regular service as on 01.07.1987 were promoted as in the earlier panel. The department has clarified the position that these officials belong to the category of



SC/ST and there were a number of reserved vacancies available. The shortage of regular service of three years as Junior Accounts Officer in respect of these five persons ranged from 13 days to 2 months and 17 days. In view of the back-log for promotion of reserved category, the department decided to relax the provision in the Recruitment Rules with the approval of the Department of Personnel & Training. The case of these five persons therefore stands on a special footing.

10. The department also emphasizes that there is no comparison between the cases of the Junior Accounts Officers, to which category the applicant belongs, and the Junior Divisional Accountants. The cadre of Junior Divisional Accountants was a dying cadre with no promotion opportunity. There were only 13 officials all over India in this cadre and they were due for retirement within 5 to 6 years. In view of this, it was decided to give them retrospective promotion with effect from 01.07.1988. The applicant has got better prospects and as such the fact that certain relaxation was done for the Junior Divisional Accountants would not entitle the applicant to the said benefit.


11. The applicant claims that cases of a number of officials were kept in sealed cover pertaining to the panel prepared on the recommendations of the D.P.C. held in October, 1988 and March, 1989 and the department should not have kept these posts vacant but should have filled them up. He refers in this connection to para 11.2 of the Department of Personnel & Training O.M. dated 10.4.1989 which states interalia that "the authority competent to fill the vacancy should be separately advised to fill the

vacancy in the higher grade only in an officiating capacity when the findings of the DPC in respect of the suitability of a Government servant for his promotion are kept in a sealed cover". In the present case officials in the earlier panel were given retrospective promotion and as such it was not possible for the department to fill up vacancies reserved for persons whose names are kept in sealed cover, even in an officiating capacity.

12. In view of the aforesaid discussions, we hold that the department has not committed any irregularity in giving prospective promotion to the applicant and they were justified in not extending to him the benefit of retrospective promotion. We accordingly see no merit in the application, which is dismissed with no order as to costs.



( V. RAMAKRISHNAN )  
MEMBER (A).



( M.S. DESHPANDE )  
VICE CHAIRMAN.